IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

-

WRIT PETITION NO : 1807 of 2005

Between:

A. Venkatesham, S/o. Sri Vittal,
R/o. H.No. LIG-43/44, APHB New Colony,

Vinayak Nagar, Nizamabad.

..... PETITIONER

AND

1 The Chairman & Managing Director, A.P.Transmission Corporation Ltd., Khairtabad, Hyderabad.
2 A.P. Northern Power Distribution Company Ltd., rep. by its

Chairman & Managing Director, Warangal.
3 Chief Genral Manager, A.P. Northern Power Distribution,

Company Limited, Corporate Office, Warangal-506004.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue an Order, Direction, Writ more particularly one in the nature of Writ of Certiorari and after calling for records in pursuant to Speaking Orders dt. 31.12.2004 and Quash the same and consequently direct the respondent to appoint the petitioner as LDC forthwith.

Counsel for the Petitioner: MR.S.RAVINDRANATH

Counsel for the Respondents.: MR.S.KISHORE

The Court made the following :

ORDER:

Heard the learned counsel for the petitioner as well as the learned Standing Counsel for the respondents.

This writ petition is filed questioning the proceedings of the 3rd respondent in Lr.No.CGM(HRD)/GM(S)/AS-II/PO.IV/504/04 dated 31.12.2004.

The case of the petitioner is that he worked as contract labour under the respondent Corporation for the last six years. It is stated that the respondent Corporation had issued a notification dated 24.4.2001 calling for the applications from the eligible candidates to apply for the posts as per B.P.Ms.No.36 dated 18.5.1997. In pursuance of the said notification, the petitioner made an application on 15.5.2001. The said notification has became the subject matter of W.P.No.5746 of 2003 and this Court set aside the same and directed the respondents to consider the case of the petitioner. But the claim of the petitioner for being absorption was rejected on the ground that he does not satisfy the eligibility criteria of B.P.Ms.No.36. Thereafter, the 3rd respondent issued the impugned proceedings dated 31.12.2004.

Counter affidavit has been on behalf of the 2nd respondent wherein it is stated that B.P.Ms.No.36 dated 18.5.1997 conferred a right of

absorption as against 50% of vacancies of various post existing as on 18.5.1997. It is also stated that the petitioner has not passed type lower examination, which is a condition precedent for being considered for appointment as L.D.C. It is also stated that as per the experience certificate produced by the petitioner it clearly indicates that he worked as supervisor, but not contract labour.

The learned counsel appearing for the petitioner has contended that the reasons assigned in the impugned proceedings dated 31.12.2004 are not tenable on the face of the material available. The first and second reasons contained in the said proceedings are to the effect that the agreement was completed by 14.6.1994 and, therefore, by 1997 the petitioner was not working. But the LS agreement has been extended till 1997. Therefore, he contends that both the grounds are not tenable. The third ground is with regard to possessing of typewriting qualification. The learned counsel for the petitioner contends that as the petitioner has got exemption for passing typewriting lower examination as per memo dated 21.6.1999, he is eligible for the post of LDC in view of the above exemption. The fourth ground on which the case of the petitioner was rejected was that he worked as supervisor, but not contract labour. The learned counsel for the petitioner relied upon the decision of this Court in W.P.No.8747 of 2001 dated 22.3.2003.

On the other hand, the learned Standing Counsel for the respondents contends that since the certificate issued by the respondents would indicate that the petitioner worked in the capacity of supervisor and, therefore, he is not a contract labour and the petitioner does not fulfils the conditions as laid down in B.P.Ms.No.36 and, therefore, the question of reconsideration of the case of the petitioner for appointment as L.D.C does not arise.

In so far as the rejection of the case of the petitioner with regard to item Nos.1 to 3 is concerned, the learned counsel for the respondent is not seriously disputing. No doubt LS Agreement No.7 of 1989-90 was completed by 14.6.1994 i.e., before 18.5.1997. But, it is the case

of the petitioner that vide memos dated 31.3.1996, 31.3.1997 and 31.12.1997 the said agreement was extended up to 31.12.1997. Therefore, prima facie, the objection in the impugned proceedings is not sustainable. With regard to possessing of typewriting qualification, the first respondent has issued a memo dated 21.6.1999 wherein it is stated “typewriting lower grade along with graduation shall be insisted for the post of L.D.Cs in cases where the initial engagement is on or after 3.8.1993”.

Admittedly, in this case the petitioner is claimed to have been appointed as supervisor prior to 1993. Therefore, the requirement of possessing typewriting examination is unsustainable and not tenable. Even according to the memo issued by the respondents the last ground on which the case of the petitioner was considered is that since the petitioner worked as supervisor, but not as contract labour and, therefore, he cannot be appointed.

The learned counsel for the petitioner contends that under Section 2(b) of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as ‘the Act’), workman shall be deemed to be employed as “contract labour” in or in connection with the work of an establishment when he is hired or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Therefore, basing on the said definition, the contention of the learned counsel for the petitioner is that the petitioner though worked as supervisor he will come within the meaning of contract labour. ‘Workman’ is also defined under Section 2(h)(i) the Act, which reads as under:

> ‘Workman’ means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or un-skilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, but does not include any such person –
>
> a. who is employed mainly in a managerial or administrative capacity; or
>
> b. who, being employed in a supervisory capacity draws wages exceeding five hundred rupees per mensem or

exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature;

c. ……."

Therefore, the definition of contract labour and workman as defined in the Act are read together, it is clear that when the person is working in supervisory capacity drawing wages exceeding five hundred rupees and whose functions are mainly on managerial nature shall not be called as workman. However, the learned counsel for the petitioner places strong reliance on the judgment in W.P.No.8747 of 2001 dated 22.3.2003 whereunder the learned single Judge of this Court gave a direction to the 2nd respondent to consider the case of the petitioner afresh in the light of the observations made and without reference to the impugned proceedings. In that case the memo No. AS.Dy.G.M.IR.AS.TR.PO.II.A1-98-99 issued by the Government was filed wherein it was stated as under:

"The attention of the Superintending Engineer, Operation Circle, Srikakulam is requested to consider the case of contract labourer in terms of memo dt.10.5.99 R/W memo dt.11.8.99 and other guidelines issued in the matter from time to time. The case of the contractor if he himself is a contract labourer may also be considered if he fulfills the conditions".

The said memo cannot override the provisions of the Act. However, the case of the petitioner has not been considered in proper and effective manner in the sense whether he was discharging the managerial functions and whether he was getting more than five hundred rupees or not. Therefore, the said impugned proceedings dated 31.12.2004 are quashed and the matter is remitted to the 3rd respondent to take appropriate decision on whether the petitioner comes within the meaning of contract labour and pass necessary orders.

The writ petition is, accordingly, disposed of. No order as to costs.

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(K.C.BHANU, J.)

19.7.2005

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To

1 The Chairman & Managing Director, A.P.Transmission Corporation Ltd., Khairtabad, Hyderabad.
2 A.P. Northern Power Distribution Company Ltd., rep. by its

Chairman & Managing Director, Warangal.
3 Chief Genral Manager, A.P. Northern Power Distribution,

Company Limited, Corporate Office, Warangal-506004.

4 2 cc to Mr.S.Kishore, S.C. for A.P.Tansco

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